

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.200(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.208 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subparts S–T [Reserved]

Subpart U—Taking of Marine Mammals Incidental to Rocket Launches from the Kodiak Launch Complex, Kodiak Island, AK

SOURCE: 71 FR 4308, Jan. 26, 2006, unless otherwise noted.

EFFECTIVE DATE NOTE: At 71 FR 4308, Jan. 26, 2006, subpart U, consisting of §§ 216.230 through 216.237 were added, effective Feb. 27, 2006 through Feb. 28, 2011.

§ 216.230 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in rocket launch activities (up to nine launches per year) at the Kodiak Launch Complex on Kodiak Island, Alaska.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to Steller sea lions (*Eumetopius jubatus*) and Pacific harbor seals (*Phoca vitulina richardsi*).

§ 216.231 Effective dates.

Regulations in this subpart are effective from February 27, 2006 through February 28, 2011.

§ 216.232 Permissible methods of taking.

(a) Under a Letter of Authorization issued pursuant to § 216.106, the Alaska Aerospace Development Corporation and its contractors, may incidentally, but not intentionally, take Steller sea lions by Level B harassment, take

adult Pacific harbor seals by Level B harassment, and take harbor seal pups by Level B or Level A harassment or mortality, in the course of conducting missile launch activities within the area described in § 216.230(a), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activities identified in § 216.230(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitat.

§ 216.233 Prohibitions.

The following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under § 216.106.

(c) The incidental taking of any marine mammal of a species not specified, or in a manner not authorized, in this subpart.

§ 216.234 Mitigation, monitoring and reporting.

(a) No more than five launches may occur between May 15 and June 30 within the 5-year period, and no more than 15 launches may occur between June 15 and September 30 within the 5-year period.

(b) The holder of the Letter of Authorization must implement the following measures for all launches occurring from June through October:

(1) Conduct five replicate fixed-wing aerial surveys of all hauled out Steller sea lions and harbor seals at Ugak Island, each flown at low tide (weather permitting), using a minimum flight altitude of 500 feet (152 meters) above sea level, with an approach no closer than 0.25 mi (0.40 km) to the haulout, and conducted a day prior to, directly following, and for three consecutive days after a launch.

(2) At least one biologist observer will accompany the pilot during all aerial surveys.

(3) Data gathered during aerial surveys will be gathered visually and